REMARKS

Original claims 1 – 10, 37 - 70, 76 – 81, 85 – 87 and 94 – 102 are pending.

As an initial matter the Examiner continues to report (see page 3, paragraph 2) that "claims 1 – 102" are rejected; this is not correct; many of the claims were restricted out more than a year ago. The only pending claims are the ones noted above. Furthermore despite the Examiner's suggestion on page 3, paragraph 2, the Lange reference (US 6,312,212) is only recently cited in the Office Action of January 27, 2006; it was not discussed in Office Actions in May 16, 2003 and October 31 2003. Consequently the deficiencies of Lange have only been recently addressed.

The rejections are traversed and argued based on the prior Response of record (incorporated by reference herein) and on the following grounds:

The Examiner continues to misapprehend the teachings of Lange. Lange is simply not an electronic auction/bidding system which allows mutually exclusive "bids" on items or ranking of the same as was pointed out in the prior response. Lange is an investment system which allows entities to hedge their bets by investing "…in the distribution of possible auction outcomes." Lange, Col. 58, ll. 55+. Lange does not process "bids" of any kind for items.

Consequently the Examiner' s conclusion that "…. Lange disclose an embodiment where bidders can specify that a set of ranked bids submitted by bidders for a set of items should be treated as mutually exclusive…" (emphasis added) is not accurate. There are bidders in the auctions; but Lange's DBAR contingent claim investors are essentially betting on different outcomes of auctions, they are not submitting bids that are mutually exclusive. While there is presumably bidding in such auctions there is absolutely no indication that such bidding process (as opposed to the investment process) allows for mutually exclusive bids as set out in claims of the present invention. Here is what Lange discloses in the section noted by the Examiner:

> ….Groups of DBAR contingent claims according to the present invention can also be used to hedge arbitrary sources of risk due to price discovery processes. For example, firms involved in competitive bidding for goods or services, whether by sealed bid or open bid auctions, **can hedge their investments** and other capital expended in preparing the bid **by investing in states of a group of DBAR contingent claims comprising ranges of mutually exclusive and collectively exhaustive auction bids**. In this way, the group of DBAR contingent claim serves as a kind of "meta-auction," and allows those who will be participating in the auction **to invest in the distribution of possible auction outcomes**, rather than simply waiting for the single outcome representing the auction result. Auction participants could thus hedge themselves against adverse auction developments and outcomes, and, importantly, have access to the entire probability distribution of bids (at least at one point in time) before submitting a bid into the real auction. Thus, a group of DBAR

> claims could be used to provide market data over the entire distribution of possible bids. Preferred embodiments of the present invention thus can help avoid the so-called Winner's Curse phenomenon known to economists, whereby auction participants fail rationally to take account of the information on the likely bids of their auction competitors. (emphasis added)

It is clear from the above that Lange is not operating an auction in which one enters *bids* for items which are mutually exclusive. Lange simply allows for investing in a "distribution of possible auction outcomes," which he argues could be ranges of mutually exclusive and collectively exhaustive auction bids. Lange's DBAR contingent claims are bought and sold in an exchange; *see* col. 8, ll. 28+ but again, there is no hint or suggestion that they are auctioned based on bids that are mutually exclusive. Consequently, the fact that Lange lets investors invest in multiple auction outcomes is not the same as allowing bidders to place mutually exclusive bids in an auction.

The Examiner makes a similarly mistake in crediting Lange as showing "bids" in connection with the ranked bid limitations of the present claims:

"….It is maintained that Lange does read on applicant's claim ….because the bids themselves are linked to the auction outcomes...." See Office Action, pages 2 – 3. This is plainly a misreading of the reference: there is NO mutually exclusive "bid" shown in Lange associated with an auction outcome. The investors in Lange can chose to make an investment in the outcomes, but there is no "bidding" using mutually exclusive bids for the DBAR contingent claims. Nor is there any teaching, hint or suggestion about allowing investors to resolve the auction outcomes in any particular desired order.

Finally, with respect to the "Winner's Curse" reference in Lange: this is a term which refers to winning bidders overestimations of the value of an item. All Lange indicates is that the "investors" could avoid the curse by examining where investors are buying DBAR contingent claims in particular distributions of bids. This would allow them to understand better if their expected bid is rational or not; but again Lange does not say anything about a "mutually exclusive" bidding process.

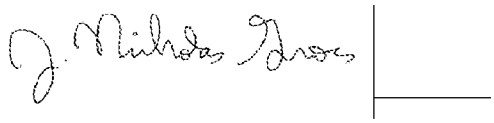
In short, since Lange does not in fact contain the disclosure that the Examiner knows is necessary to support a finding of obviousness, the present rejection cannot be sustained. Given there is a complete lack of evidence, the present record cannot meet the criteria needed for a prima facie case of obviousness, and, in that case, the present rejections should be overturned. *See e.g.*, In re Neilson, 816 F.2d 1567, 1572, 2 USPQ 2d 1525, 1528 (Fed. Cir. 1984); In Re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

CONCLUSION

Applicant has again pointed out the many deficiencies in Lange which make it apparent that such reference is not relevant to the current claims. The claims are clearly patentable thereover, and reconsideration is respectfully requested.

Should the Examiner wish to discuss the present case in person, he is invited to please contact the undersigned at any convenient opportunity.

Respectfully submitted,



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